BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of An Investigation to Determine)
the Assessment Rate for the Eighteenth Year of) Docket No. 14-GIMT-105-GIT
the Kansas Universal Service Fund, Effective)
March 1, 2014)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION REGARDING KUSF CONTRIBUTION ISSUES

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files a Report and Recommendation dated October 3, 2014. The Report and Recommendation is being filed in response to the Commission's order in this docket issued March 18, 2014, regarding Kansas Universal Service Fund (KUSF) contribution issues. Staff recommends the Commission adopt several modifications and clarifications to the KUSF contribution rules.

WHEREFORE, Staff respectfully requests that the Commission adopt the findings contained in its Report and Recommendation, and issue an order reflecting the same.

Respectfully Submitted,

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STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Notice of Filing of Staff's Report and Recommendation Regarding KUSF Contribution Issues,* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 3rd day of October, 2014.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2015

Notary Public

My Appointment Expires: August 17, 2015

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Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION
UTILITIES DIVISION

TO: Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

FROM: Sandy Reams, Assistant Chief of Telecommunications
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: October 3, 2014

SUBJECT: Docket Number: 14-GIMT-105-GIT
In the Matter of an Investigation to Determine the Assessment Rate for the Eighteenth Year of the Kansas Universal Service Fund, Effective March 1, 2014.

EXECUTIVE SUMMARY:

On March 18, 2014, the Commission issued an Order (March 18th Order) in this Docket to address Kansas Universal Service Fund (KUSF) contribution issues identified by GVNW Consulting, Inc. (GVNW), the KUSF administrator. The Commission invited parties to submit Comments no later than April 17, 2014, and Reply Comments by May 9, 2014, and directed Staff to file a Report and Recommendation to summarize the parties' positions and provide its recommendations.

In compliance with the March 18th Order, this Report contains a summary of the parties' positions and Staff's recommendations. Staff recommends that the Commission: (1) adopt the Federal Communications Commission's (FCC) rules regarding allocation and reporting of end-user discounts for KUSF contribution purposes; (2) adopt the FCC's safe harbor provisions for all bundled services that include assessable telecommunications service; (3) require providers, including interconnected Voice over Internet Protocol (VoIP) providers, to follow the bundled service safe harbor provisions for all bundled service offerings, including those marketed as offering free telecommunications service; (4) require companies to maintain customer billing records for a period of no less than three-years after the end of a KUSF fiscal year; and (5) allow companies to report Early Termination Fee (ETF) revenue using the accrual, modified cash, or cash method of accounting provided the company's external auditor agrees with such method. Moreover, technological and competitive changes within the telecommunications industry may result in the Commission needing to modify the KUSF contribution policy. Staff will continue to monitor the FCC's consideration of the Federal Universal Service Fund (FUSF) contribution methodology and advise the Commission of any FCC decision that could impact the KUSF contribution policy or that the Commission may wish to consider for KUSF contribution purposes. Staff; therefore, suggests that the Commission not take any action at this time.

BACKGROUND:

Consistent with K.S.A. 66-2002(h) and K.S.A. 66-2008, the Commission established the KUSF in a December 27, 1996, Order in Docket No. 94-GIMT-478-GIT (Docket 94-478).[1] At the time the KUSF was implemented, the majority of telecommunications subscribers received their phone service from the incumbent local exchange carrier (ILEC). The ILECs were required to follow the federal Uniform System of Accounts, 47 C.F.R. Part 32 (Part 32), for regulatory accounting purposes. Part 32 was, therefore, used as a guideline for the revenue categories to be reported for KUSF contribution purposes.[2]

As the telecommunications industry changed and more telecommunications subscribers received service from competitive providers, the KUSF reporting guidelines continued to rely on Part 32 account rules, however, the KUSF reporting guidelines were modified to reflect that competitive providers may use other accounting systems and classify revenue in different categories. Competitive providers are to report the same revenue categories as those reported by the ILECs. This KUSF contribution approach helps to ensure that revenue categories are technologically and competitively neutral and recognizes that competitive providers may use a variety of accounting systems and that such systems may change over time. Staff notes that Commission decisions regarding KUSF contributions are incorporated into the guidelines.[3]

Pursuant to K.S.A. 66-2010, GVNW performs limited audits of companies required to contribute to or receive funds from the KUSF to ensure they are in compliance with their KUSF obligations. Through the performance of such audits, GVNW identified discrepancies between the methodologies companies utilize to contribute to the KUSF. GVNW identified these discrepancies in a Memorandum provided to Staff. Staff included GVNW's Memorandum with its testimony in this Docket,[4] suggested that the Commission consider a more global approach to the KUSF contribution base, and suggested that the Commission request industry comments on the issues.

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[1] *In the Matter of a General Investigation Into Competition within the Telecommunications Industry in the State of Kansas*, Docket No. 190,492-U (94-GIMT-478-GIT) (Docket 94-478), December 27, 1996, Order.
[2] Id., February 3, 1997, Order on Reconsideration, Attachment 1.
[3] Kansas Universal Service Fund (KUSF) Carrier Remittance Worksheet (CRW) Instructions, Attachment E, Reportable Revenues (http://www.gvnw.com/Portals/0/kusf/instructions/2014/AttachmentE.pdf).
[4] *In the Matter of an Investigation to Determine the Assessment Rate for the Eighteenth Year of the Kansas Universal Service Fund, Effective March 1, 2014,* Docket No. 14-GIMT-105-GIT (Docket 14-105), Direct Testimony of Sandra K. Reams on behalf of the Kansas Corporation Commission Staff, December 19, 2014, p. 32-5 and Exhibit SKR-2 (Staff Year 18 Testimony).

On January 23, 2014, the Commission issued an Order (January 2014 Order) setting the KUSF Year 18 assessment rate, directed companies to report revenue to the KUSF gross of service discounts, and stated it would conduct an investigation of the issues raised by GVNW in this Docket.

The Commission's March 18th Order invited parties to submit Comments on the issues identified by GVNW and Staff. Comments were due by April 17, 2014, and Reply Comments were due no later than May 9, 2014, on the following issues:

1. **Discounts**: Should companies report telecommunications revenue gross or net of discounts? What discounts should be recognized (e.g. all discounts or only certain discounts)? What is the appropriate time period to recognize discounts that may be offered for an extended period of time? If companies are to report gross revenues and a company claims it cannot determine gross revenues, what methodology should be employed to ensure all carriers report on an equitable basis?

2. **Bundled Services**: How should revenues for bundles or all data plans be identified for purposes of determining assessable KUSF revenues? Should revenues continue to be allocated to voice services, or pursuant to K.S.A. 66-104(a), should all revenue be identified as revenue subject to the KUSF (prior to allocation between the interstate and intrastate jurisdictions)?

3. **VoIP Packages**: How should VoIP revenue be allocated when a company claims its service is provided for free and the subscriber price is solely for the connection device? Should companies that claim their voice service is "free" and the only customer charge related to their service is the cost to purchase a device to access the company's VoIP Service be allowed to report zero intrastate assessable revenues? If a portion of the cost is allocated to telecommunications services, how should that portion be identified (e.g. 50% of revenue for device; 50% for telecommunications, 75% to device and 25% to telecommunications, etc.)?

4. **Electronic Billing/Revenue Records**: How long should carriers be required to maintain electronic customer billing records, given that audits occur based on historical data? If a carriers states it does not have electronic billing records for the audit period, what information do they have available to support their revenues (e.g. a company may be subject to other audits, (e.g. state revenue departments, Internal Revenue Service, etc.)?

5. **Early Termination Fees (ETF):** What Early Termination Fees should be reported to the KUSF and under what accounting basis?

6. **Global Issue of KUSF Contributions:** Given changes in technology and services in the telecommunications world, should the revenue subject to the KUSF be expanded to include other revenue? What revenue should be subject to the KUSF in accordance with K.S.A. 66-104(a)? What other issues should the Commission consider in regards to KUSF contributions?

Comments were filed by: Southwestern Bell Telephone Company; Teleport Communications America, LLC; AT&T Corp.; SBC Long Distance, LLC; Bell South Long Distance, Inc.; SNET America, Inc.; and New Cingular Wireless PCS, LLC (AT&T, collectively);[5] The United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, and Embarq Missouri, Inc., d/b/a CenturyLink and CenturyLink Communications, LLC (collectively CenturyLink);[6] the Independent Telecommunications Group, Columbus, et. al., the State Independent Alliance, Mutual Telephone Company, Southern Kansas Telephone Co., Inc., and Wheat State Telephone, Inc. (collectively, the RLECs);[7] Jive Communications, Inc. (Jive);[8] T-Mobile Central, LLC (T-Mobile),[9] and MCImetro Access Transmission Services, LLC; MCI Communications Services, Inc.; Teleconnect Long Distance Services & Systems Company, TTI National, Inc., Verizon Enterprise Solutions, LLC; Verizon Long Distance, LLC; Verizon Select Services, Inc.; Verizon Wireless (VAW), LLC; Topeka Cellular Telephone Company, Inc.; WWC License, LLC; and Alltel Communications, LLC (collectively, Verizon).[10]

Reply Comments were filed by AT&T;[11] Comcast Phone of Kansas, LLC d/b/a Comcast Digital Phone (Comcast);[12] Cox Kansas Telecom, LLC (Cox);[13] NE Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero);[14] and TW Telecom of Kansas City, LLC (TWT).[15]

Staff notes that the examples contained within this Report do not delve into the assignment or allocation of revenues between the interstate and intrastate jurisdictions; however, the revenue will be assigned to the jurisdiction in which it is derived or allocated between the jurisdictions.

ANALYSIS:

I. Discounts: Should companies report telecommunications revenue gross or net of discounts? What discounts should be recognized (e.g. all discounts or only certain discounts)? What is the appropriate time period to recognize discounts that may be offered for an extended period of time? If companies are to report gross revenues and a company claims it cannot determine gross revenues, what methodology should be employed to ensure all carriers report on an equitable basis?

[5] April 17, 2014, AT&T's Comments On KUSF Contribution Issues (AT&T Comments).
[6] April 17, 2014, CenturyLink Comments (CenturyLink Comments).
[7] April 17, 2014, Comments Of The Independent Telecommunications Group, Columbus, et. al., the State Independent Alliance, and Mutual Telephone, Southern Kansas Telephone, and Wheat State Telephone Companies (RLEC Comments).
[8] April 17, 2014, Comments of Jive Communications, Inc. (Jive Comments).
[9] April 17, 2014, Initial Comments of T-Mobile Central, LLC (T-Mobile Comments).
[10] April 17, 2014, Verizon's Initial Comments (Verizon Comments).
[11] May 9, 2014, AT&T's Reply Comments on KUSF Contribution Issues (AT&T Reply).
[12] May 9, 2014, Reply Comments of Comcast Phone of Kansas, LLC (Comcast Reply).
[13] May 9, 2014, Reply Comments of Cox Kansas Telecom, LLC (Cox Reply).
[14] May 9, 2014, Reply Comments of NE Colorado Cellular, Inc. (Viaero Reply).
[15] May 9, 2014, Reply Comments of TW Telecom of Kansas City, LLC (TWT Reply).

A. Issue

As a result of competition, companies not only offer discounts via bundled service offerings, but also promotional discounts (e.g. switch companies and receive a lower price or free service for a period of time) and organizational discounts (e.g. military, government employee, small business, etc.). The Commission has not specifically addressed the issue of whether revenue should be reported gross of end-user discounts or net of such discounts; however, the KUSF instructions to carriers has relied on the FCC's rules for Federal Universal Service Fund (FUSF) purposes to the greatest extent possible. For KUSF purposes, companies have been allowed to recognize promotional discounts for up to 90 days, thereafter, they are to report the stand-alone price of the assessable telecommunications service.

For KUSF purposes, companies report gross revenue prior to the application of end-user discounts based on the Commission's determination that companies must report the stand-alone price of an assessable telecommunications service included in a bundle with the associated discount assigned to the non-assessable services. The Commission, in its January 2014 Order, directed companies to report revenue gross of end-user discounts until it could further investigate this issue.

GVNW has determined that revenue derived from services associated with end-user discounts is being inconsistently reported for KUSF purposes, with some companies reporting revenue net of end-user discounts.[16] In support of reporting revenue net of end-user discounts, companies have advised GVNW that their billing systems cannot identify gross revenue prior to the application of end-user discounts.

B. Comments

AT&T states that although all parties to the Docket are in the communications business, each company offers different services and uses different methods to provide, bill, and market their service to end users, thus, there may not be a "one size fits all answer"[17] to the issues identified by GVNW. AT&T supports allowing companies to report revenue or pay KUSF assessments on revenue actually billed to or collected from end-user customers.[18] AT&T cites to the FCC's 2014 Instructions for FUSF contribution purposes and 47 C.F.R. 54.712(a) to support its position that requiring carriers to report gross revenue for KUSF purposes would be contrary to the FCC's policy that FUSF contributions be "inclusive of any discount of the customers' interstate telecommunications charges."[19] AT&T opines that allowing companies to report revenues net of customer discounts is analogous to allowing carriers to report net of uncollectible revenue and to require revenue be reported on a gross basis results in companies being taxed or assessed on revenue that is not received. This, states AT&T, reduces a carrier's incentive to offer discounted prices to subscribers. AT&T also states that the FCC allows companies that maintain their accounting records in accordance with

[16] Docket Nos. 13-CRCZ-712-KSF, 14-TMCZ-052-KSF, 14-SWBT-055-KSF, and 14-VONZ-066-KSF.
[17] AT&T Comments, ¶ 3.
[18] Id., ¶4(a).
[19] Ibid.

Generally Accepted Accounting Principles (GAAP) to report earned, instead of billed, revenue resulting in those companies reporting earned revenue net of service discounts.[20]

CenturyLink states the Commission should avoid creating advantages and disadvantages between carriers that are "competing for the same customers"[21] and ensure KUSF contribution requirements are applied on a technologically and competitively neutral basis. CenturyLink states that many carriers maintain their billing and accounting systems in a manner to comply with Commission rules for reporting revenue and, if some companies are allowed to ignore the rules, they are provided a competitive advantage through lower costs that allow those companies to offer greater discounts or lower prices to customers.[22]

The RLECs state that if a certificated company cannot identify gross revenue, it "arguably lacks financial and managerial competence."[23] The RLECs continue by stating that non-regulated providers are obligated to maintain information in a manner that ensures they meet their KUSF obligation, which is a cost of doing business. The RLECs explain that this is important especially when a company's business "involves the use for private profit of KUSF-supported facilities."[24]

Comcast supports allowing companies to report revenue net of end-user discounts for KUSF purposes.[25] Comcast states this approach is important if a company's billing system cannot track KUSF assessments on a gross basis.

Jive cites to the KUSF Frequently Asked Questions (FAQs) and states that the KUSF rules require service discounts to first be applied to non-assessable bundled service revenue.[26] Jive recommends that the Commission continue to exempt gross and net non-assessable revenue from the KUSF and allow discounts to be reported for any period of time necessary, in concert with the "economic realities" of a transaction based on discounts.[27] Jive states that companies should not be required to report revenue prior to recognizing end-user discounts since the company will not receive the revenue associated with the discount.

T-Mobile suggests that companies be allowed to report revenue net of end-user discounts.[28] T-Mobile explains some companies may not have accounting or billing systems that track KUSF assessments prior to applying discounts, which could result in those companies having to gather information from each individual customer's monthly bill. T-Mobile states that allowing companies to report revenue on a net discount basis would be consistent with Kansas tax reporting requirements and analogizes end-user

[20] AT&T Reply, ¶ 3.
[21] CenturyLink Comments, p. 1.
[22] Id., p. 2.
[23] RLEC Comments, ¶ 5.
[24] Id.
[25] Comcast Reply, ¶ 1.
[26] Jive Comments, p. 2.
[27] Id., p. 3.
[28] T-Mobile Comments, ¶ 3.

discounts to uncollectible revenue in that neither is received by a company.[29] T-Mobile continues by stating that a net discount policy is consistent with K.S.A. 66-2008's provision that KUSF contributions be on an "equitable and nondiscriminatory basis."[30] Finally, T-Mobile states it is not aware that any other state requires companies to report gross revenue prior to end-user discounts.

TWT also supports adoption of a KUSF contribution policy that allows carriers to report revenue net of end-user discounts.[31] TWT states a net-discount approach will result in carriers being assessed on actual end-user revenue subject to the parameters set forth for VoIP services established by the FCC in the Declaratory Ruling.

Verizon suggests that if carriers are not allowed to report revenue net of end-user discounts, it would be contrary to the treatment of ETF revenue[32] since end-user discounts are similar to ETFs in that companies only receive the actual revenue collected; not the pre-discount revenue.[33]

Viaero explains that some companies may not have billing systems "capable of easily providing monthly Kansas revenues gross of any discounts provided and billed" to subscribers.[34] Viaero, citing to AT&T and T-Mobile's Comments, suggests that a requirement for the KUSF to be assessed on gross revenue is inconsistent with other Kansas taxes or assessments. Viaero concludes by stating that to be consistent, end-user discounts should be treated like ETF and uncollectible revenue for KUSF purposes.

Cox agrees with AT&T, Jive, T-Mobile, and Verizon,[35] and states its billing system cannot track its KUSF assessments on a pre-discounted basis.

C. Analysis

When a customer realizes a price discount through purchasing bundled service, the Commission has determined the company must report the stand-alone price of the assessable telecommunications service included in a bundle for KUSF purposes and the entire discount is to be applied to the non-assessable services. The Commission found that this approach helps to ensure that a carrier does not assign or allocate all, or an unreasonable portion, of the discount to telecommunications service;[36] thereby, minimizing its KUSF obligation.

CenturyLink and the RLECs state they maintain their accounting and billing systems in a manner that ensures they report gross revenue prior to recognizing end-user discounts. In

[29] Id., ¶ 4.
[30] Id., ¶ 5.
[31] TWT Reply, ¶ 3.
[32] Verizon Comments, ¶ 3.
[33] Id., ¶ 4.
[34] Viaero Reply, ¶ 1.
[35] Cox Reply, ¶ 1.
[36] *In the Matter of a General Investigation Into Procedures for Recording and Reporting Kansas Universal Service Fund Revenues for Assessment Purposes*, Docket No. 03-GIMT-932-GIT (Docket 03-932), September 2, 2003, Order.

contrast, AT&T, Comcast, Cox, Jive, T-Mobile, and Verizon recommend carriers be allowed to report revenue net of end-user discounts. To support this position, the parties cite to the Commission's approach to uncollectibles, reporting of ETF revenue, other state USFs, and Kansas sales tax rules.

Staff reviewed the information cited to by parties to support the position for the Commission to adopt a policy that allows carriers to report revenue net of end-user discounts. AT&T, citing to 47 C.F.R. §54.712(a), implies that a policy requiring a carrier to report gross revenues is inconsistent with FCC's rules that allow carriers to report using either billed revenue or earned revenue being reported and that require FUSF contributions to be "inclusive of any discount of the customers' interstate telecommunications charges."[37]

Staff notes 47 C.F.R. §54.712(a), entitled, "Contributor recovery of universal service costs from end users," states,

> (a) Federal universal service contribution costs *may* be recovered through interstate telecommunications-related charges to end users. *If a contributor chooses* to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor. [emphasis ours]

Thus, 47 C.F.R. §54.712(a) does not address whether a company is to report revenue gross or net of end-user discounts. Instead, it is similar to K.S.A. 66-2008 in that it allows a carrier to recover its USF assessment from customers. Kansas statute provides that a carrier may not collect more than its assessment from customers and 47 C.F.R. §54.712(a) limits the amount of FUSF recovery to the interstate portion of the customer's bill time the applicable contribution factor. Under both state and federal statute, a carrier may pay more in USF assessments than the amount it recovers from customers.

Parties also cite to the FCC's reporting instructions for FUSF contributions.[38] Staff has reviewed the FCC's Instructions and discussed the Instructions with Staff of the Universal Service Administrative Company (USAC).[39] Based on the FCC's Bundled Service Order[40] and other determinations by the FCC, carriers are required to report revenues for FUSF contribution purposes, as follows:

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[37] AT&T Comments, ¶ 4a) and footnote 1.

[38] 2014 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), last viewed September 18, 2014, at: http://usac.org/_res/documents/cont/pdf/forms/2014/2014-FCC-Form-499A-Form-Instructions.pdf.

[39] USAC is the third-party administrator of the FUSF.

[40] *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61; *Implementation of Section 254(g) of the Communications Act of 1934, as amended*, and *1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets,* CC Docket No. 98-183 (Bundled Service Order), ¶ 50.

1. If a customer only purchases an assessable telecommunications service or a bundle that includes only assessable telecommunications services, the end-user discount would be recognized and the net revenue reported for FUSF contribution purposes. For example, a subscriber qualifies for a 10% military discount and purchases a $30 per month unlimited voice plan. After recognizing the 10% military discount, the customer is billed $27 for his service. For FUSF purposes, the provider would report the $27 of billed revenue.[41]

2. The stand-alone price of an assessable telecommunications service included in a bundled service package must be reported for FUSF purposes; discounts may not be applied to the assessable telecommunications services. For example, a subscriber switches service providers and, for three months, qualifies for a $10 credit toward any purchased service plan. The customer purchases a $50 monthly service plan that includes unlimited voice and internet services. After recognizing the promotional credit, the customer is billed and pays $40. The stand-alone price for unlimited voice service is $20 per month, the stand-alone price for the internet service is $40 a month and the discount associated with purchasing the bundled service plan is $10 and with the $10 promotional credit, the customer recognizes $20 of discounts. For FUSF and KUSF purposes, the carrier should report the $20 stand-alone price of the voice service and assign $20 of discounts to the non-assessable internet service included in the bundle. It is possible that a carrier may not be able to account for the total discounts offered to a customer. For example, assume the $50 bundle purchased by the customer not only includes unlimited voice and internet, but also cable television (TV) service. The stand-alone price of cable TV is $30 a month. By purchasing the bundled services, the customer saves $30 in bundled discounts and $10 for the promotional credit, and is billed and pays $40 for his service. For FUSF and KUSF purposes, the provider should report the $20 stand-alone price of the unlimited voice service and has $20 in billed revenue for the internet and cable TV services. How the provider assigns, allocates, or recognizes the combined $40 for the discounts and promotional credit is irrelevant.[42]

3. If the carrier cannot, or elects not to, identify the stand-alone price of the assessable telecommunications service, the billed bundled service price must be reported for FUSF contribution purpose.[43] Based on the example above, if the provider claims it cannot determine a stand-alone price for the unlimited voice service or that the stand-alone price is zero, the carrier would report the $40 for FUSF purposes.

The FCC reasoned this approach discourages gaming of the system yet maintains the "stability and predictability in funding the universal service support mechanisms."[44] The FCC rules apply to all providers offering assessable telecommunications services,

[41] September 23, 2014, email from USAC to KCC Staff, Sandy Reams.
[42] Ibid.
[43] If the provider claims the voice service is provided for free, the provider must be able to support that no voice service was used. June 12, 2014, email from USAC Staff to KCC Staff, Sandy Reams.
[44] Bundled Service Order, ¶ 49.

regardless of the technology used to offer the services or the components included in a bundle. The FCC's approach provides carriers with flexibility while recognizing that "carriers may bundle goods and services in a multitude of ways that cannot be anticipated."[45]

With regard to other state USFs, Staff asked members of the National Association of Regulatory Utility Commissions Staff Subcommittee on State Universal Service Fund Administrators whether their USFs require carriers to report revenue gross or net of end-user discounts. Indiana and Oregon stated they specifically allow companies to report revenue net of end-user discounts. Michigan has not specifically addressed this issue; however, since carriers self-report their revenue, it is likely that at least some carriers report revenue net of end-user discounts to the Michigan fund. California requires gross revenue to be reported with carriers allowed to recognize certain discounts (e.g. Lifeline discount) prior to reporting revenue. Wisconsin requires all discounts to be assigned to non-assessable revenue included in a bundle, with the stand-alone price of an assessable service reported for state USF purposes.

Parties also cite to Kansas sales tax regulations to support a KUSF policy that allows carriers to report revenue net of end-user discounts. Based on the Kansas Department of Revenue's (KDOR) policy guide for telecommunications services,[46] and discussions with KDOR personnel,[47] revenue net of end-user discounts would be reported for sales tax purposes when a provider offers a discount and is not reimbursed for the discount. If, however, a discount is offered by a provider and the provider is reimbursed for the discount, the revenue is subject to Kansas sales tax. Since the end-user service discounts in question are offered by the carriers themselves, it is likely that the net discount revenue policy would apply.

The purpose of Kansas sales tax and the KUSF are not the same, as evidenced by the Kansas Courts' determination that the KUSF is an assessment, not a tax.[48] The revenues subject to Kansas sales tax also differ from those subject to the KUSF. For sales tax purposes, carriers report gross revenue prior to uncollectible revenue. For KUSF purposes, carriers report gross revenue and may report uncollectible revenue. Sales tax is levied on revenue from direct-to-home satellite service, television, the Federal Subscriber Line and FUSF charges, however, these revenue streams are not subject to the KUSF.

Some parties claim their billing and/or accounting systems do not allow them to track KUSF assessments on a pre-discounted basis or track gross revenue prior to the discounts. These claims are analogous to a grocery store stating that it cannot determine the revenue earned on the goods sold because the customer paid $5 of sales tax. Based on the example of a subscriber that qualifies for a $10 a month promotional credit and a 10%

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[45] Id.
[46] Department of Revenue Policy and Research Information Guide, EDU-65, "Sales Taxation and Sourcing of Telecommunications Services," (EDU-65) last viewed June 26, 2014, at: http://www.ksrevenue.org/pdf/edu65.pdf, and Kansas Sales Tax and Compensating Use Tax, last viewed June 26, 2014, at: http://www.ksrevenue.org/pdf/pub1510.pdf.
[47] June 30, 2014, email from S. Brunkan, KDOR, to S. Reams, Staff, with a copy to Richard Cram.
[48] *Citizens' Utility Ratepayer Board v. Kansas Corporation Commission*, 943 P.2d 494, 505 (1997).

military discount, the subscriber purchases a $60 plan and pays $45. Assuming the company elects not to assign a stand-alone price to the unlimited voice service, the entire $45 would be reported to the KUSF and, based on the current 6.05% KUSF assessment rate, the company would pay $2.72 to the KUSF and can collect no more than this amount from the subscriber. Alternatively, if the company's stand-alone price for the unlimited voice service is $20, the company would pay $1.21 to the KUSF and could collect up to this amount from the subscriber. The claims that a company's billing system does not allow it to determine the gross revenue essentially say that if the company were to rely on the $1.21, or even the $2.72, billed to a customer it has no way of knowing that the subscriber purchased a $60 service or paid $45 for the service. The company should not determine its revenue based on the KUSF assessment billed to a subscriber. This methodology is not appropriate for KUSF purposes nor FUSF, sales tax, or income tax purposes.

Formal adoption of the FCC's rules may result in a change in the amount of revenue reported for KUSF purposes; however, Staff is unable to quantify the impact. Staff suggests that the impact should be minimal given the limited circumstances in which a company would recognize revenue net of end-user discounts for KUSF purposes.

D. Recommendation

Staff recommends that the Commission adopt the following for KUSF contribution purposes, when reporting end-user discounts:

1. The 90-day period for companies to recognize promotional offerings and a reduction in assessable telecommunications service revenue should be eliminated;

2. If an end-user purchases only an assessable telecommunications service or a bundle that includes only assessable telecommunications services, the end-user discount (e.g. promotional, organizational, etc.) may be recognized and the net revenue reported for KUSF contribution purposes;

3. If an end-user purchases a bundle that includes both assessable telecommunications services and non-assessable services, the stand-alone price of the assessable telecommunications service revenue must reported for KUSF purposes, with all of the discounts assigned to the non-assessable telecommunications service;[49] and

4. If a provider claims it cannot, or elects not to, determine a stand-alone price for an assessable telecommunications service included in a bundle, the billed bundled service price, after application of end-user discounts, will be reported for KUSF contribution purpose. If the provider does not advertise a stand-alone price for the telecommunications service but develops such a price (e.g. cost, usage, or traffic study, etc.), the provider should be advised that the methodology used to develop

[49] Docket 03-932, September 2, 2003, Order.

the price is subject to evaluation during an audit or enforcement action and that such methodology may be deemed unreasonable.

II. Bundled Services: How should revenues for bundles or all data plans be identified for purposes of determining assessable KUSF revenues? Should revenues continue to be allocated to voice services, or pursuant to K.S.A. 66-104(a), should all revenue be identified as revenue subject to the KUSF (prior to allocation between the interstate and intrastate jurisdictions)?

A. Issue:

The Commission requires that when telecommunications services are bundled with non-telecommunications services (text messaging, data services,[50] etc.), the stand-alone price of the assessable telecommunications service be imputed for KUSF purposes.[51] Carriers are allowed to conduct studies to allocate revenue to assessable telecommunications services included within a bundle.

The wireless and VoIP industry previously marketed their service plans as including a set number of voice minutes and text messages, with the plans expanded to later include data. The focus of marketing plans now is often on the data service with the voice and text messaging marketed as being unlimited and/or free. As a result, some carriers claim they provide voice service as an ancillary service and, therefore, it is provided free of charge. Based on this stance, the company may state it has not developed a stand-alone price for the voice service and that there is no assessable telecommunications service revenue derived from the bundled service. Some carriers, however, may allocate a minimal amount of revenue to the assessable telecommunications service within the bundle.

Staff and GVNW, therefore, recommended that when a company does not identify a stand-alone price for the assessable telecommunications service, the Commission require the company to report all of the bundled service revenue for KUSF purposes.[52] This approach is consistent with the FCC's Bundled Service Order.

Section 254 of the Federal Telecommunications Act requires all telecommunications service providers to contribute to the FUSF on "an equitable and non-discriminatory basis." For FUSF purposes, the FCC's "primary goal is to have a framework that deters carriers from gaming the system while being competitively neutral, easy to administer, and simple to understand."[53] FCC rules for bundled services recognize that companies may bundle services in a variety of ways that may not have been anticipated at the time the FCC issued its Order and the rules also provide carriers with flexibility "to determine

[50] *In the Matter of the Petition of the Joint Petitioning Wireless Carriers Requesting A Generic Investigation into the Commission's Assessment Methodology Regarding Billing Address versus Place of Primary Use*, Docket No. 06-GIMT-943-GIT KUSF, September 7, 2006, Order Granting Request of Joint Petitioners.

[51] Docket 03-932, September 2, 2003, Order.

[52] Docket 14-105, Staff Year 18 Testimony.

[53] Bundled Service Order, ¶ 49.

the appropriate allocation of revenues for universal service support purposes." The FCC adopted the following safe harbors that are "afforded a presumption of reasonableness in an audit or enforcement context"[54] when reporting bundled service revenue:[55]

1. a carrier must report the unbundled or stand-alone price for the assessable telecommunications services, with the bundle service discount applied to the non-assessable services included in the bundle; and

2. when a company elects not to determine a stand-alone price for the assessable telecommunications service, it should report all of the bundle service revenue for FUSF purposes.

The FCC provided the following example:

> For example, assume that a carrier offers a bundled service package of voice-mail and basic phone service to end-users at $25.00 per month. The carrier decides that it cannot distinguish revenue for the basic service (the telecommunications service) from voice-mail (the non-telecommunications service). This carrier would report tele-communications revenue of $25.00 per month. This option would permit those contributors that are unable or unwilling to separate end-user telecommunications revenues from non-telecommunications revenue to comply with their universal service obligations when they generate revenues from bundled telecommunications services and CPE [customer premises equipment]/enhanced service offerings.

The FCC; however, allows providers to use other allocation methodologies, but cautioned that,

> . . . any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context. In evaluating the reasonableness of any alternative methods, we will apply the standards underlying the safe harbors described above. For example, carriers should not apply discounts to telecommunications services in a manner that attempts to circumvent a carriers' obligation to contribute to the universal service support mechanisms. Should an audit or enforcement proceeding be initiated, carriers will need to provide evidence that the amount of reported telecommunications revenues that they report reflects compliance with the carriers' obligation to contribute to the universal service support mechanism based on interstate end-user telecommunications revenue.[56]

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[54] Id., ¶ 52-3.
[55] Id., ¶ 50-1.
[56] Id., ¶ 53.

B. Comments

AT&T states it is industry practice to allocate revenue derived from bundled services first between services and products, and then by assessable and non-assessable services, as applicable.[57] AT&T continues by stating that telecommunications service revenue is then allocated between the interstate and intrastate jurisdictions using an approved allocation methodology that is consistent with the FCC's methods approved for FUSF purposes. AT&T does not support expanding the revenues subject to the KUSF and claims that the Commission does not have authority to impose KUSF assessments on services generated from informational or non-jurisdictional revenues or services.

CenturyLink explains that wireless and VoIP providers are authorized to allocate revenue between the interstate and intrastate jurisdictions using the safe harbor (or other approved methodology) and are allowed to determine how revenue will be allocated between telecommunications and non-telecommunications services for KUSF purposes.[58] This approach allows a company to use a revenue allocation methodology that is most advantageous for the company. To avoid creating competitive advantages and disadvantages between carriers, CenturyLink states the Commission should adopt rules that ensure a level playing field for all providers.[59] CenturyLink supports the Commission opening a separate proceeding to address issues, including the complex issue of wireless bundles and VoIP packages, to ensure KUSF contributions occur in a technologically neutral manner. Furthermore, CenturyLink suggests the Commission consider establishing a safe harbor or other policy to ensure consistency and competitive neutrality for reporting purposes.[60]

Comcast agrees with AT&T, T-Mobile, Jive, and Verizon that carriers should be allowed to continue to allocate bundled service revenue to telecommunications services subject to the KUSF instead of a policy that requires the assessment of all revenue from a multi-service bundle.[61] Comcast explains that, whatever bundled service revenue is assigned to an assessable telecommunications service, the revenue should be allocated between the interstate and intrastate jurisdictions based on the FCC's Safe Harbor, a company-specific traffic study, or direct assignment. Comcast supports using the same allocation methodologies for KUSF and FUSF purposes.

The RLECs state that although some companies offer telecommunications services that are free from price, service, or elements of regulation, the KUSF must be assessed in an equitable manner to prevent providing an "unlawful regulatory bias."[62] The technology used to provide telecommunications service does not matter as Kansas law requires all providers to equitably contribute to the KUSF since they benefit from using the rural LECs' KUSF-supported facilities.[63] The RLECs support a requirement for all

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[57] AT&T Comments, ¶ 4b.
[58] CenturyLink Comments, p. 2.
[59] Id., p. 3.
[60] Ibid.
[61] Comcast Reply, ¶ 2.
[62] RLEC Comments, ¶ 6.
[63] Ibid.

companies, regardless of the technology used to provide service, to allocate bundled service revenue to telecommunications service by imputing an amount equal to the stand-alone price for the service. This approach is consistent with the policy adopted by the Commission for block service and bundled service plans. The RLECs also support a policy that if a company cannot or elects not to identify the jurisdiction or the stand-alone price for telecommunications service, the entire service charge be subject to the KUSF.[64]

Jive supports maintaining the requirement for carriers to identify and allocate revenue to voice service.[65] Jive does not support a policy under which all revenue collected is subject to the KUSF assessment; however, in the event a carrier does not perform a usage study or otherwise assign revenue to voice service, the Commission could adopt a safe harbor for revenue allocation purposes.

T-Mobile supports maintaining the requirement that bundled service revenue be allocated between services instead of requiring that all bundle service revenue being subject to the KUSF assessment.[66] The basis for such reporting should be the company's audited books and records that are maintained in accordance with GAAP since companies should properly account for service revenue earned from bundles. T-Mobile states each company is in the best position to know how to properly allocate bundled revenues and claims that any methodology adopted by the Commission could result in inconsistencies with a company's books and records. It is important that any revenue allocation methodology be consistent with FUSF allocation methodologies to prevent companies from being over or under assessed while providing greater efficiencies for carriers.[67]

TWT supports consistency between FUSF and KUSF assessment, allocation, and accounting methodologies, including the treatment of bundled service revenues.[68] TWT states this approach avoids conflicts, the potential of double assessments on revenue, and the need to maintain different methodologies for state and federal purposes.

Verizon supports maintaining the requirement that companies report KUSF assessable revenue in bundled service based on the stand-alone cost of the service.[69] Verizon states "data-only" plans are different than plans that include "free" or "unlimited" voice services and data-only plans are exempt from the KUSF pursuant to K.S.A. 66-2008(a) and K.S.A. 66-1,187(o).[70] Citing to K.S.A. 66-104(a), Verizon states data-only plans allow access to the Internet and a subscriber must use a third-party application to utilize voice service. Verizon explains that the FCC's determination that data services are interstate information services; not intrastate telecommunications services that could be subject to state USF assessments.[71]

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[64] Id., ¶ 8.
[65] Jive Comments, p. 4.
[66] T-Mobile Comments, ¶ 7 - 8.
[67] Ibid.
[68] TWC Reply, ¶ 5.
[69] Verizon Comments, ¶ 5.
[70] Id., ¶ 6-7.
[71] Verizon Comments, ¶ 8.

Viaero, like AT&T, states it is "industry practice to allocate bundled service revenue between services and products, and then separate them further between assessable and non-assessable services."[72] Viaero supports a KUSF allocation methodology that is consistent with that for FUSF purposes, and claims "states are preempted from imposing state USF assessments on data service offerings since they constitute interstate information services, not intrastate telecommunications services."[73]

C. Analysis

For KUSF purposes, a provider is currently required to report the stand-alone price of an assessable telecommunications service included in a bundle.[74] For FUSF purposes, carriers are also required to report the stand-alone price of assessable telecommunications service included in a bundle. A carrier has the option to determine a stand-alone price or, if the carrier elects not to, it must then report the entire bundle service price – at the price billed to the customer – for FUSF purposes. For example, a customer purchases a $100 bundled service that includes unlimited voice, cable television, and internet service. The stand-alone prices are $20, $50, and $60, respectively, for a total unbundled service price of $130. For both FUSF and KUSF purposes, the provider must report $20 of assessable telecommunications revenue, or if the provider cannot, or elects not to, determine the stand-alone price of the unlimited voice service, the provider may report the $100 for FUSF purposes.

For companies that market their plans as data plans with free phone services, the FCC's rules still require the provider to report the stand-alone price for the telecommunications service or, if the company elects not to determine a stand-alone price, the company must report the entire bundled service price, regardless of whether the bundle includes enhanced services or CPE.[75]

Similarly, many providers no longer advertise stand-alone prices for voice telecommunications services. In these cases, the FCC does allow a provider to use alternative methodologies to allocate revenue to the assessable telecommunications service within a bundled service plan. For example, a small business with 4 employees subscribes to a business wireless plan that includes unlimited voice and text messaging and 50 Gigabytes (GB) of data for $500 per month. The provider does not advertise a separate stand-alone price for the unlimited voice service nor does it advertise a stand-alone price for unlimited text messaging service. The provider does, however, advertise a plan with unlimited voice and text messaging service for $50 a month per smartphone and also advertises 50 GB of data for up to 20 devices for $400 a month. The provider could perform a traffic or usage study to determine the revenue to be assigned to the assessable voice service or determine that it is more cost effective to report all of the revenue. The provider, however, should be able to document and support the allocation methodology, with the allocation methodology subject to review during an audit or

[72] Viaero Reply, ¶ 2.
[73] Ibid.
[74] http://www.gvnw.com/Portals/0/kusf/instructions/2014/Instructions.pdf, last viewed September 4, 2014.
[75] Unbundled Services Order, ¶51.

enforcement action. The provider should also be aware that the methodology may not be deemed reasonable.

D. Recommendation

Staff recommends that the Commission maintain the policy that carriers are required to report the stand-alone price of an assessable telecommunications service included in a bundle for KUSF purposes. Staff recommends that the Commission adopt the FCC's Bundled Service safe harbors and deem the use of the safe harbors as reasonable for KUSF contribution purposes. Staff further recommends that carriers be allowed to use other methodologies in place of the safe harbors, with such methodologies subject to audit and enforcement and evaluated on a case-by-case basis. Carriers should be advised that they maintain the burden to demonstrate that the alternative methodology is reasonable and that the carrier's approach reflects compliance with its KUSF contribution obligations. Providers should be aware, however, that an alternate methodology may be deemed unreasonable. This approach, consistent with the FCC's requirements, will provide greater administrative efficiencies for providers and provide further clarification of how bundle service revenue must be treated when an assessable telecommunications service is bundled with enhanced services or CPE.

III. VoIP Packages: How should VoIP revenue be allocated when a company claims its service is provided for free and the subscriber price is solely for the connection device? Should companies that claim their voice service is "free" and the only customer charge related to their service is the cost to purchase a device to access the company's VoIP Service be allowed to report zero intrastate assessable revenues? If a portion of the cost is allocated to telecommunications services, how should that portion be identified (e.g. 50% of revenue for device; 50% for telecommunications, 75% to device and 25% to telecommunications, etc.)?

A. Issue

Interconnnected VoIP providers are required to report and contribute to the KUSF pursuant to K.S.A. 66-2008(a) and Commission Orders.[76] Specifically, K.S.A. 66-2008(a), states:

> The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. § 9.3 (October 1, 2005), to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of

[76] *In the Matter of the Investigation to Address Obligations of VoIP Providers With Respect to KUSF*, Docket No. 07-GIMT-432-GIT.

> interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Interconnected VoIP service, defined in 47 C.F.R. §9.3, requires an end-user to have a broadband connection and internet protocol compatible CPE, allows real-time, two-way communications, and allows an end-user to originate and terminate calls on the Public Switched Telephone Network (PSTN). For KUSF purposes, interconnected VoIP providers are to identify Kansas customers based on their primary place of usage, generally their E911 service address, and identify Kansas intrastate revenue subject to the KUSF assessment using the methodologies adopted by the FCC. Kansas' authority to assess nomadic interconnected VoIP providers was affirmed by the FCC.[77]

VoIP service packages tend to include unlimited local calling, optional calling features (e.g. voice mail, caller ID, etc.), and unlimited long-distance calling within the US and/or internationally. For KUSF purposes, some VoIP providers claim they have not earned any revenue subject to the KUSF because voice service is provided for free and revenue is only earned from the sale of the CPE. For example, MagicJack markets its Plus plan as including six-months' free phone service with the purchase of the CPE device.[78] The company markets its GO plan for $59.95, including one year of free phone service, a free conference number, and a $10 Magic Dollar credit.[79]

B. Comments

AT&T supports the Commission adopting a policy that requires VoIP providers to be assessed on their actual end-user revenue subject to the parameters set forth in the FCC's Declaratory Ruling.[80]

CenturyLink suggests that given the significant impact that wireless and VoIP provider revenues have on the KUSF, and the complexity of revenue allocations, the Commission open a separate proceeding to address these issues.[81] CenturyLink also suggests that the Commission adopt rules that are technologically and competitively neutral, and consider adoption of a revenue allocation safe harbor.

The RLECs state that MagicJack benefits from the use of the PSTN since it is able to connect customers to its service. Since the PSTN is not free, the RLECs support the requirement for VoIP providers to contribute to the support of the network cost.[82] The RLECs state no service is truly free and, therefore, if MagicJack cannot determine a

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[77] *In the Matter of Universal Service Contribution Methodology Petition for Declaratory Ruling of the Nebraska Public Service Commission and the Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122 (Docket 06-122), Declaratory Ruling, rel. Nov. 5, 2010.
[78] http://www.magicjack.com/magicJackPLUS.html, last viewed August 22, 2014.
[79] http://www.magicjack.com/magicJackGO.html, last viewed August 22, 2014.
[80] AT&T Comments, ¶ 4(c).
[81] CenturyLink Comments, p. 3.
[82] RLEC Comments, ¶ 9.

reasonable price for its voice service charge or elects to not incur business expense related to such a determination, a charge should be imputed for the voice service.[83] The RLECs propose that the Commission determine an affordable voice service charge for MagicJack and similar providers based on the wireline affordable local rate methodology contained in K.S.A. 66-2005.[84]

Jive, citing to the Commission's policy that exempts rental and CPE sale revenue, states a similar policy should apply when a company offers free voice service.[85] Jive explains that MagicJack offers six months of free voice service to customers when its CPE device is purchased and, absent contradictory evidence, the offer of free voice service is just that.[86] Jive states that no revenue should be allocated to the assessable voice service until the six month period has passed and the device is paid for. Citing to MagicJack's requirement that a customer must then purchase a one year or five year voice service plan, Jive states at that time revenue should be allocated to the voice service and subject to the KUSF. In conclusion, Jive states that a company that does not directly contribute to the KUSF may do so through the purchase of services from an underlying carrier.

Viaero supports the Commission maintaining its policy that allows carriers to allocate revenue to assessable telecommunications services included in a bundle.[87]

Verizon states that when a provider claims that a customer is only paying for the CPE, the provider should be required to impute an amount equal to the stand-alone price of the voice service for KUSF purposes.[88] A provider's claims or failure to allocate a portion of revenue to voice or assessable services does not make the voice service free.[89] Verizon equates the purchase of a CPE device with voice service to a bundled service and states an allocation methodology, whether based on the stand-alone price of a service, fair market value, or other method, must be applied to allocate revenue between the components in the bundle. Verizon stresses that VoIP providers must not be allowed to "elevate form over substance by unilaterally attributing *all* revenues to a device,"[90] and claim they have no revenue subject to the KUSF. This would allow a provider to skirt its KUSF obligations and result in all companies evading both their FUSF and KUSF obligations. At a minimum, Verizon supports that when a provider claims it does not have stand-alone service prices, the Commission require an amount equal to a competitor's stand-alone VoIP voice service rate be imputed for KUSF purposes.[91]

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[83] Ibid.
[84] Id., ¶ 10.
[85] Jive Comments, p. 4.
[86] Id., p. 5.
[87] Viaero Reply, ¶ 2.
[88] Verizon Comments, ¶ 9.
[89] Id., ¶ 10.
[90] Id., ¶ 11.
[91] Id., ¶ 12.

C. Analysis

K.S.A. 66-2008 requires all companies that earn Kansas intrastate retail telecommunications service revenue to contribute to the KUSF.[92] Staff notes that certain revenues, including wholesale revenue and CPE revenues, are exempt from the KUSF.

All parties support a KUSF contribution policy that requires a VoIP provider to assign or allocate revenue to the assessable telecommunications service when a provider claims it provides the voice service free of charge. Jive, however, states that such a policy should apply only after the customer completely pays for the connection device.

Staff suggests that when a provider claims its assessable voice telecommunications service is free, the carrier is attempting to game the system and avoid its KUSF obligations. The PSTN is not free and any provider that relies on the PSTN to connect its telecommunications customers to the PSTN to provision assessable telecommunications service should not be allowed to avoid its KUSF obligations. A provider should not be allowed to claim the stand-alone price of the assessable telecommunications service is free, but should be required to assign or allocate revenue to the assessable telecommunications service.

The FCC's Bundled Service Order specifically addresses bundled service offerings that include both assessable telecommunications services and non-assessable services, such as CPE or enhanced services. The Bundled Service Order and the bundled service safe harbor provisions require that the stand-alone price of the assessable telecommunications service be reported for USF purposes or if the provider cannot or elects not to determine a stand-alone price for the assessable telecommunications service, the entire bundle service revenue should be reported for USF contribution purposes.

A provider should be allowed to determine a reasonable stand-alone price of the assessable telecommunications service (e.g. cost study, traffic or usage study, etc.), however, if the provider elects not to do so, the Commission should not allow the provider to claim its voice service is free. The Commission should require the provider to report all of the revenue derived from the bundled service for KUSF purposes and only allow a provider to report zero revenue for KUSF purposes if the provider presents documentation that supports that its subscribers did not use any assessable telecommunications service. Staff suggests that it would be rare for a subscriber to purchase a connection device and not use any voice service. If a provider does not use the safe harbor methodologies to allocate revenue from bundled services that include assessable telecommunications services and elects to use an alternative allocation methodology, the provider should be aware that the methodology may not be deemed reasonable and that the methodology will be subject to evaluation on a case-by-case evaluation via an audit or enforcement action.

[92] Docket 94-478, December 27, 1996, Order.

D. Recommendation

Staff recommends that the Commission adopt the FCC's Bundled Service safe harbors and in the case of a provider claiming that it provides assessable telecommunications services for free, require the provider to: (1) report the stand-alone price of the assessable telecommunications services included in the bundle; (2) report the entire price of the bundled service if the provider cannot, or elects not to, determine the stand-alone price of the assessable telecommunications service, and (3) allow a provider to use an alternative allocation methodology, with the methodology subject to audit and enforcement action. The Commission should advise providers that alternate methodologies will be evaluated on a case-by-case basis and may be deemed unreasonable. If a provider claims it does not have any voice service revenue to report for KUSF purposes, the provider should be required to provide documentation to support that its subscribers did not use any voice telecommunications services.

IV. Electronic Billing/Revenue Records: How long should carriers be required to maintain electronic customer billing records, given that audits occur based on historical data? If a carrier states it does not have electronic billing records for the audit period, what information do they have available to support their revenues (e.g. a company may be subject to other audits (e.g. state revenue departments, Internal Revenue Service, etc.)?

A. Issue

Pursuant to K.S.A. 66-2010, GVNW is responsible for auditing carriers required to contribute to, or that receive monies from, the KUSF to ensure the companies correctly identify and report revenue to the KUSF, pay the appropriate assessment, and collect no more than the authorized amount from customers. These audits, referred to as carrier audits, require GVNW to rely on historical company data, including books and records, as well as billing records, to support the revenue reported, allocation methodologies, and amounts billed to and collected from customers. The carrier audits, by necessity, occur after the close of a KUSF fiscal year. For example, the Commission recently issued Orders opening the carrier Audit Dockets for KUSF Year 17, effective March 1, 2013, through February 28, 2014.[93] GVNW is required to file its Audit Report in each Docket no later than June 30, 2015.

GVNW advised the Commission that during more recent audits, it has been advised that documentation to support the data reported by the company to the KUSF is limited by: (1) outsourcing of billing and revenue accounting functions; (2) the availability of only electronic customer bills; and/or (3) maintaining records, including customer bills, for a limited period of time (e.g. a rolling 12-month or 90-day period.

A lack of documentation to support the information reported to the KUSF in addition to billing records to support the revenue billed and the KUSF assessment collected from end-user customers has resulted in GVNW having to modify the audit procedures in an

[93] See Docket Nos. 15-SWBT-041-KSF through 15-TWVT-056-KSF.

attempt to verify that the company correctly identified and reported revenue to the KUSF and collected only the authorized KUSF assessment from consumers. Staff and GVNW recommended that the Commission consider requiring companies to maintain billing records for a minimal period of time, for example, no less than 24 months.[94]

B. Comments

AT&T states that maintenance of customer billing and revenue records is important, but it can be administratively difficult and expensive for carriers.[95] AT&T suggests that to minimize the length of time documentation must be kept, carrier audits should occur as soon as practicable after the close of a KUSF year. AT&T recommends that the Commission adopt a policy to require billing and revenue documentation be maintained for three years after the close of a KUSF year.

CenturyLink urges the Commission to adopt and apply consistent rules for all providers, along with enforcement of the rules to avoid creating a competitive advantage to any service provider.[96]

The RLECs state that a carrier cannot be allowed to avoid its public responsibility by failing to maintaining sufficient billing and accounting information.[97] They continued by stating that today's technology should not create an impediment in meeting such requirements.

Jive supports a retention period that does not to exceed three years, given the necessary nature of audits to ensure adequate supporting documentation. Companies should not be required to bear an unreasonable cost of maintaining digital records,[98] however, other factors, including Internal Revenue Service (IRS), State revenue agency, and shareholder requirements, should be sufficiently met by adoption of a three-year retention period.[99]

TWT suggested that a two-year retention period should be adopted as it would limit the financial and operational resources a company must expend to maintain customer billing records for KUSF audit purposes.[100]

Verizon limited its Comments to stating that it does not oppose Staff's suggestion that carriers maintain electronic billing records for a twenty-four month period.[101]

C. Analysis

First, Staff wishes to clarify that the 24-month period referenced in its testimony was offered as an example, not a specific recommendation to the Commission. Staff suggests,

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[94] Docket No. 14-105, Staff Year 18 Testimony.
[95] AT&T Comments, ¶ 4(d).
[96] CenturyLink Comments, p. 2 – 3.
[97] RLEC Comments, ¶ 11.
[98] Jive Comments, p. 5-6.
[99] Id., p. 6.
[100] TWT Reply, ¶ 3.
[101] Verizon Comments, ¶ 13.

however, that a 24-month period is not sufficient and will not ensure all documentation to support the information reported for KUSF contribution purposes is available. For example, the Commission typically opens the 16 carrier Audit Dockets covering a specific KUSF fiscal year within six months after the close of the KUSF fiscal year. GVNW must then complete each audit and file its Audit Report in the Docket no later than the following June 30th. At a minimum, the documentation to support the information reported for March 2013 would need to be maintained from March 2013 through at least June 2015 – or 27 months. If GVNW requests and is granted an extension of time in which to complete an audit, the length of time a provider needs to maintain the supporting documentation is even longer.

While the telecommunications industry has taken steps to reduce their costs and use resources in a more efficient manner, maintenance of documentation to support revenues earned is required not only for KUSF purposes, but also other agencies, including other state agencies (e.g. KDOR), the IRS, and shareholders.

For FUSF contribution purposes, the FCC requires contributors and their consultants or contractors to maintain documentation for at least five years,[102] pursuant to 47 C.F.R. §54.706(e), which states,

> Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. This document retention requirement also applies to any contractor or consultant working on behalf of the contributor.

The Commission has a fiduciary duty to the KUSF and providers that contribute to the fund to ensure providers report the correct revenue and pay the related assessments to the KUSF. The Commission also had a duty to ensure that providers collect no more than their statutorily authorized assessment from their end-user customers.

D. Recommendation

Staff recommends that the Commission adopt a three-year period for carriers to maintain all records and documentation, whether in paper or electronic medium, to support the revenue reported and assessments paid to the KUSF. Records should include, but may not be limited to, accounting and billing records relied on to complete the KUSF Carrier Remittance Worksheets submitted to the KUSF administrator and the KUSF assessment billed to and collected from customers.

V. What Early Termination Fees (ETF) Should be Reported and Under What Accounting Basis?

A. Issue

Many providers, specifically wireless providers, charge ETFs to recover revenue loss that occurs when a subscriber cancels his service prior to the end of the service agreement or contract. ETFs are subject to the KUSF assessment, similar to disconnection and reconnection charges levied to wireline subscribers. Carriers are required to report their gross ETF revenue and are authorized to report the related uncollectible ETF revenue for KUSF purposes.

GVNW, through the performance of carrier audits, became aware that some carriers report ETF revenue using the modified cash basis of accounting, through which the company reports only the ETF revenue collected from customers. GVNW recommends that the Commission allow companies to either report gross ETF revenue reduced by the related uncollectible revenue or report the ETF revenue collected from customers, provided the provider's external auditor approves of the method. Staff concurs with GVNW's recommendation. Staff notes that the ETF revenue reported by a company for KUSF purposes should be equal regardless of the accounting methodology used by the company.

B. Comments

AT&T,[103] Jive,[104] T-Mobile,[105] TWT,[106] Verizon,[107] and Viaero[108] support GVNW's recommendation that the Commission allow companies to report ETF revenue using the accrual, modified cash, or cash basis of accounting. Verizon explains that under the accrual method of accounting, "bad debt is generally written off on the account as a whole, including other unpaid charges."[109]

CenturyLink supports the Commission's adoption, application, and enforcement of KUSF policies in a manner that is applied consistently for all providers of voice service.[110] CenturyLink states that the application of the same policy for all providers helps to ensure that no company is allowed to reduce its costs and offer better customer pricing by way of non-compliance with KUSF contribution rules.

The RLECs state that a contributor should not be allowed to avoid its KUSF obligations due to business choices, including the lack of appropriate action to collect monies due to the company.[111] Pursuant to K.S.A. 66-2008, a carrier is responsible for the amount

[103] AT&T Comments, ¶ 4(e).
[104] Jive Comments, p. 6.
[105] T-Mobile Comments, ¶ 8.
[106] TWC Reply, ¶ 3.
[107] Verizon Comments, ¶ 15.
[108] Viaero Reply, ¶ 1.
[109] Verizon Comments, ¶ 15.
[110] CenturyLink Comments, p. 2.
[111] RLEC Comments, ¶ 12.

subject to the KUSF assessment, whether or not the amount is actually recovered from end-user subscribers.

C. Analysis

Through its performance of carrier audits, GVNW became aware that some companies have modified how they report ETF revenue to the KUSF and recommends that the Commission allow carriers to report ETF revenue collected from end-users by reporting either gross revenue reduced by the related portion of uncollectible revenue or reporting the actual ETF revenue collected from customers. GVNW recommends, and Staff concurs, that the methodology used for KUSF purposes be agreed to by the carrier's external auditor.[112]

Parties support adoption of a KUSF contribution policy that allows a carrier to report ETF revenue using the accrual, modified cash, or cash basis of accounting since all approaches should result in a company reporting only the ETF revenue received. As noted by Verizon, under the gross revenue approach, a provider may incorrectly report all of the revenue written-off on a customer's account, not only the uncollectible revenue associated with assessable telecommunications services.[113] This could result in the carrier over-reporting the amount of uncollectible revenue and artificially reducing the revenue subject to the KUSF. Parties suggest, and Staff agrees, that allowing a carrier to report only the ETF revenue collected is consistent with the Commission's policy that allows carriers to report gross revenue and uncollectible revenue actually written-off.[114]

D. Recommendation

Staff recommends that the Commission adopt a policy to allow carriers to report ETF revenue using one of the following accounting methods, provided that the company's outside auditor concurs: (1) the accrual method of accounting; (2) the modified cash basis of accounting; or (3) the cash basis of accounting.

VI. Global Issue of KUSF Contributions: Given changes in technology and services in the telecommunications world, should the revenue subject to the KUSF be expanded to include other revenue? What revenue should be subject to the KUSF in accordance with K.S.A. 66-104(a)? What other issues should the Commission consider in regards to KUSF contributions?

A. Issue

K.S.A. 66-2008(a) requires that all carriers contribute to the KUSF on an "equitable and nondiscriminatory basis." Given changes in technology and that the KUSF assessable revenue base continues to erode, Staff recommended that the Commission consider a more global review of revenue categories subject to the KUSF. Staff suggested that the

[112] Docket 14-105, Staff Year 18 Testimony.
[113] Verizon Comments, ¶ 15.
[114] Docket 94-478, August 1999 Uncollectible Order.

Commission consider its recommendation in light of K.S.A. 66-104(a), which states, in part:

> As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals, or facsimile communications, including all such communications now in existence or as may be developed in the future.

Staff explained that its recommendation is consistent with the FCC's current review of the contribution methodology.[115]

B. Comments

AT&T recommends that the Commission not take any actions to expand the KUSF assessment to revenues earned from new or changed technology or services in consideration of current activities related to both the FUSF and the KUSF.[116] AT&T explained that the 2013 Kansas legislature modified the KUSF to reduce the high-cost support payable to companies and created the Telecommunications Study Committee to study the KUSF, the FUSF, and the possible creation of a state broadband fund. AT&T, therefore, states that the FCC's reforms of the FUSF and Intercarrier Compensation (ICC), the creation of new federal funding mechanisms, and the FCC's current review of the FUSF contribution methodology support this Commission waiting to take any action with regard to the KUSF contribution methodology.[117]

Comcast urges the Commission not to take any action to expand the application of the KUSF assessment to revenue derived from new or changed services or technologies.[118] Comcast, instead, recommends that the Commission take into consideration activities surrounding the KUSF and FUSF, including changes to Kansas statutes and the FCC's FUSF and ICC reforms. Comcast suggests that if the Commission takes any action, it should "proceed cautiously and slowly" since the recent reforms may lead to further changes in contribution policies.

The RLECs did not directly comment on this issue; however, they support the Commission ensuring that all providers contribute to the KUSF on an equitable and non-discriminatory basis.

Jive, citing to K.S.A. 66-2008 and K.S.A. 66-104(a), states the Commission with authority to assess non-voice service, such as picture and text messaging, revenue.[119] K.S.A. 66-2008(a); however, limits the revenue subject to the KUSF to those earned from carriers that offer "telecommunications service or interconnected VoIP service." The legislature also restricted KUSF support to these same carriers to ensure that

[115] *In the Matter of Federal-State Joint Board on Universal Service,* WC Docket No. 96-45; *Universal Service Contribution Methodology*, WC Docket No. 06-122; and *A National Broadband Plan For Our Future,* GN Docket No. 09-51 (FUSF Contribution Proceeding).
[116] AT&T Comments, ¶ 6-7.
[117] Id., ¶ 8.
[118] Comcast Reply, ¶ 3.
[119] Jive Comments, p. 6.

telecommunications or VoIP services support the public policies set forth in K.S.A. 66-2001.[120] Jive, therefore, urges the Commission to ensure it imposes KUSF obligations within the limits of the law.

TWT recommends that the "KUSF assessment should be technology agnostic in that the type of protocol used by a carrier should not dictate whether it is or is not included for KUSF assessment purposes."[121] Although TWT supports applying the KUSF assessment to any protocol that facilitates end-user intrastate telecommunications services, it does not support the Commission taking any action that may conflict with the FCC's reforms of universal service or the results of those reforms.

Verizon states that the Legislature, through House Bill (HB) 2201, reformed the KUSF by capping or reducing KUSF support distributions and requiring an audit of the overall effectiveness and efficiency of the KUSF.[122] The Commission should not "approach this proceeding with an aim to expand the size of the KUSF or its revenue base."[123] Citing to a court case and K.S.A. 66-2008(a), Verizon asserts that Kansas law does not allow the Commission to expand the KUSF revenue base beyond "intrastate telecommunications" and "VoIP services."[124] Similarly, Verizon states that K.S.A. 66-104(a) does not grant the Commission authority to expand the revenue subject to the KUSF since the Commission only has authority to assess "intrastate telecommunications services" offered by the provider categories identified in K.S.A. 66-2008(a).[125] Verizon claims that federal law "preempts any attempt to assess data services for KUSF purposes, since data services are not intrastate telecommunications services, but are instead, interstate information services."[126] Finally, Verizon states that only the Kansas legislature has authority to expand the scope of the KUSF contribution base and has opted not to do so; instead, the legislature has taken steps to limit the growth of the KUSF.[127]

Viaero states that the Commission is not authorized under K.S.A. 66-104(a) to assess data service revenue and, furthermore, data service is an interstate information service not subject to state jurisdiction.[128] Viaero continues by stating that the Commission should not look to expand the KUSF assessment to new or modified technologies or services; instead, the Commission should consider the changes at both the state and federal level since they may change the KUSF contribution methodology on a going-forward basis.[129]

C. Analysis

The intrastate retail telecommunications service revenue base subject to the KUSF has declined annually and is expected to continue to decline as customers rely more on non-

[120] Id., p. 7.
[121] TWT Reply, ¶ 4.
[122] Verizon Comments, ¶ 2.
[123] Id., ¶ 2.
[124] Id., ¶ 16.
[125] Id., ¶ 17.
[126] Verizon Comments,¶ 18.
[127] Id., ¶ 19.
[128] Viaero Reply, ¶ 2.
[129] Id., ¶ 4.

voice services (e.g. text messaging, social networks, etc.) for communications purposes. As stated by various parties, the PSTN is not free, yet many non-assessable service providers rely on the PSTN to connect end-user customers to their services.

The FCC is considering whether the current revenue-based contribution methodology should be modified for FUSF purposes.[130] Specifically, in a Further Notice of Proposed Rulemaking, adopted April 27, 2012 (2012 FNPRM), the FCC sought comment on the following four major areas: (1) how to clarify and modify the rules on what services and service providers must contribute to the FUSF; (2) whether the current revenue contribution system should be reformed or whether an alternative system should be adopted; (3) how to improve the administration of the FUSF contribution system; and (4) how to improve the FUSF contribution methodology with respect to recovery from end users.

On August 6, 2014, the FCC adopted an Order to request the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations on how the FCC should modify the FUSF contribution methodology. The FCC referred the record developed in response to its 2012 FNPRM to the Joint Board and asked the Joint Board to develop recommendations with a focus on how any modification to the FUSF contribution system would impact the statutory principle of state and federal mechanisms that preserve and enhance universal service. The FCC also requested the Joint Board to present its recommendations to the FCC no later than April 7, 2015. The FCC is required by statute to act on a Joint Board recommendation within a year of receipt.[131]

D. Recommendation

Staff recommends that Staff continue to monitor the FCC's Contribution Methodology Proceeding and that the Commission not take any action on whether, and how to, expand the KUSF contribution base until after the Joint Board submits its recommendations to the FCC and the FCC considers such recommendations.

[130] FUSF Contribution Proceeding.
[131] 47 C.F.R. 254(a)(2).

CERTIFICATE OF SERVICE

14-GIMT-105-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation Regarding KUSF Contribution Issues was served by electronic service on this 3rd day of October, 2014, to the following:

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